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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/367,019	10/14/1999	PHILIPPE BOYE	10350/168	3779

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AMSTER ROTHSTEIN & EBENSTEIN
90 PARK AVENUE
NEW YORK, NY 10016

EXAMINER

GUARRIELLO, JOHN J

ART UNIT	PAPER NUMBER
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1771

12

DATE MAILED: 12/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/367019

Applicant(s)

Boye

Examiner

John Guarnie/b

Group Art Unit

1771

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 8/21/2002, 10/4/2002

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 9-31 is/are pending in the application.
Of the above claim(s) 9-17 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 18-31 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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DETAILED ACTION

15. The Examiner acknowledges papers # 10 and 11 of 8/21/2002, and 10/4/2002.

Election/Restriction

16. The Examiner affirms the election of Group II, claims 18-31. Group I, claims 9-17 are withdrawn regarding the lack of unity requirement under 35 U.S.C, 121 and 372. Applicant's arguments regarding the Restriction requirement made under Lack of Unity guidelines regarding National Stage application filed under 371 have been considered, but, paper # 9 of 8/1/2002, the written Restriction, clearly clarifies the Groups, and since applicant elected Group I, claims 18-31, the restriction is made final for reasons of record.

Claim Rejections - 35 USC § 112

17. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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18. Claims 18-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 18, line 1, the preamble of the claim is directed to “garment” it is the Examiner’s position that this “garment” encompasses anything that would cover the body.

In claims 19-23, 25-30, it is not clear what is encompassed by “system” since these claims are directed to “garment”, this is a clear lack of antecedent basis. It is the Examiner’s position that the dependent claims even though directed to a “system” are understood to be encompassed by the components of the independent claims which are now directed to “garment”.

In claim 31, line 1, the preamble of the claim is directed to “a system” then to a “garment”, it is the Examiner’s position that this preamble is directed to a “garment”, and with the addition of the component directed to the “third layer”, this would still encompass anything that would cover the body corresponding to a **garment**.

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19. It is the Examiner's position that in order to advance prosecution, the following rejection is made.

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claims 18-31 rejected under 35 U.S.C. 103(a) as being unpatentable over Klein 2,657,396 in view of Anyon et al. 6,151,928.

Klein describes an air ventilated suit (corresponding the claimed invention with air circulation means) with an outer layer, an inner layer, and an area or zone where air may be circulated (corresponding to air circulation means of the claimed invention), (column 1, lines 5-35). Klein describes an outer layer made from neoprene coated nylon (corresponding to the hydrophobic first layer of the claimed invention), (column 2, lines 3-8). Klein

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describes an inner layer (corresponding to the 2nd layer of the claimed invention), (column 2, lines 9-10). Klein describes an intermediate zone which is a space or mesh maintained by a plurality of cords, (column 2, lines 10-17). Klein describes the first layer outer and the inner layer second layer joined together by stitching, (column 2, lines 18-34) which corresponds to the claimed link threads. Klein differs from the claimed invention because it is silent about stating the stitching is link threads.

Anyon describes textile fabrics with hydrophobic layers and hydrophilic layers that are joined together by a thick layer of columnar stitches, (column 1, lines 4-8; lines 63-67). Anyon describes that the stitches (which correspond to link threads of the claimed invention) provide space for air circulation and provide additional space for moisture retention of excess moisture thus ensuring good wick of excess moisture resulting from perspiration, (column 2, lines 1-14; column 3, lines 8-18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the thick layer of stitching threads of

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Anyon (corresponding the claimed invention of the linking threads) in the fabric for the stitches of Klein motivated with the expectation that improved wicking of the moisture would be evidenced as noted by Anyon, (Column 2, lines 1-7). Regarding any third layer, it would have been obvious to one of ordinary skill in this art to optimize layers in order to provide protection from environmental conditions as appropriate as noted in Anyon, (column 3, lines 22-25).

Applicant's arguments regarding Klein were considered but with the new grounds of rejection they were not considered germane.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The

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fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John J. Guarriello:gj

Patent Examiner

December 11, 2002


ELIZABETH M. COLE
PRIMARY EXAMINER